United Nations ST/IC/2014/19

Secretariat

24 July 2014

Information circular*

To: Members of the staff at Headquarters

From: The Assistant Secretary-General for Human Resources Management

Subject: **Employment of household employees on G-5 visas**

1. The purpose of the present circular is to inform staff members who hold a G-4 visa and employ or seek to employ a household employee to whom a G-5 visa has been granted or has been requested of a diplomatic note received from the United States Mission to the United Nations (see annex). The note concerns a reminder of the requirements relating to the hiring of domestic workers and the importance of all staff members abiding by them.

2. The United States Mission also reminds staff members and the United Nations Secretariat to ensure the fair and equitable treatment of domestic workers. Staff must take into consideration the information and recommendations contained in the diplomatic note and the present circular, including but not limited to the following:

(a) A provision in the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires the Secretary of State to suspend, when necessary, the issuance of G-5 visas to applicants seeking to work for officials of an international organization if there is credible evidence of abuse and exploitation of the G-5 visa holder and if the concerned organization is found to have tolerated such acts;

(b) If a prosecuting authority in the United States advises the Department of State and/or the United States Mission that, but for a staff member's immunity, it would prosecute the staff member for a serious crime relating to the abuse or exploitation of a domestic worker, the Department's policy is to request a waiver of any applicable immunity and, in the absence of a waiver, to require the departure of the staff member of the United Nations and his or her dependants;

(c) The United Nations Secretariat is encouraged to implement internal policies to ensure adherence by staff members to the requirements regarding method of payment and retention of contracts and payment records. In that context, staff members are expected to retain all employment and payment records pertaining to

* The present circular will be in effect until further notice and complements ST/IC/2009/42, ST/IC/2012/7 and ST/IC/2013/30.

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their domestic employees under a G-5 visa and to make such documentation available upon request;

(d) Staff members are expected to pay any damages awarded by a court with jurisdiction over a case brought against them by their former domestic workers. After staff members are terminated, they are not immune from jurisdiction for matters relating to their employment of domestic workers because the acts comprising the employment of a domestic worker are not acts performed as a staff member and, thus, are not within the scope of residual immunity under article 39 (2) of the Vienna Convention on Diplomatic Relations.

3. The note provides details of domestic worker visa eligibility requirements, which include pre-notification, ability to pay, and contract requirements, as well as other required and recommended terms of employment. It also provides the procedure for registering a domestic worker upon arrival in the United States, making wage payments, updating written contracts and providing notification of termination.

Annex

Diplomatic note dated 3 July 2014 from the United States Mission to the United Nations addressed to the Secretariat

The United States Mission to the United Nations presents its compliments to the United Nations Secretariat and has the honour to refer to its diplomatic notes HC-125-S-09 dated 23 October 2009, HC-18-S-12 dated 20 January 2012 and HC-99-S-13 dated 27 September 2013, which set forth the requirements regarding the employment of foreign domestic workers. The United States Mission wishes to remind the United Nations Secretariat of these requirements and to request that all staff members of the United Nations again be apprised of the Department of State's requirements relating to the hiring of domestic workers and the importance of all the staff members of the United Nations abiding by them.

The United States Mission would also like to take this opportunity to remind the United Nations Secretariat that a provision of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires the Secretary of State to "suspend, for such period as the Secretary determines necessary, the issuance of A-3 visas or G-5 visas to applicants seeking to work for officials of a diplomatic mission or an international organization, if the Secretary determines that there is credible evidence that one or more employees of such mission or international organization have abused or exploited one or more non-immigrants holding an A-3 visa or a G-5 visa, and that the diplomatic mission or international organization tolerated such actions". A review by the Secretary of evidence of abuse or exploitation and the United Nations Organization's toleration of such abuse or exploitation would take many factors into account, potentially including United Nations Secretariat policies and record-keeping regarding the employment of domestic workers. The staff members of the United Nations should be advised that, in the United States, withholding a person's passport may be evidence of the crime of trafficking in persons or constitute a separate crime of unlawful conduct with respect to immigration documents. Under United States law, trafficking in persons includes the crime of subjecting someone to forced labour through restraint, force, threats of force or legal coercion (such as a threat to send a person to jail or to be deported), in order to obtain that person's labour.

In addition, the United States Mission wishes to remind the United Nations Secretariat of its policy regarding serious crimes. If a prosecuting authority in the United States advises the Department of State and/or the United States Mission that, but for a staff member's immunity, it would prosecute the staff member of the United Nations for a serious crime relating to the abuse or exploitation of a domestic worker, Department policy is to request a waiver of any applicable immunity and, in the absence of a waiver, to require the departure of the staff member of the United Nations and his or her dependants.

Since 2009, the Department has informed the United Nations Secretariat of its efforts to develop a framework to ensure the fair and equitable treatment of domestic workers and provided the United Nations Secretariat with information and guidance relating to the employment of such workers. The Department has also advised the United Nations Secretariat to take any and all measures necessary to ensure that staff members of the United Nations employing domestic workers respect the laws that relate to the treatment of these workers. It is essential that all

those who employ domestic workers comply with their contractual obligations and otherwise treat their workers in a fair and equitable manner. The United States Mission has made clear that it looks to the United Nations Secretariat to be responsible for the conduct of staff members of the United Nations and to ensure that staff members employing domestic workers respect all relevant requirements. Accordingly, the United Nations Secretariat is encouraged to implement internal policies to ensure adherence by staff members of the United Nations to the requirements outlined below regarding method of payment and retention of contracts and payment records. The United States Mission also recommends that the United Nations Secretariat maintain copies of signed contracts between its staff members and their domestic workers, and that the United Nations Secretariat be able to review such contracts as well as records of payments made, and hours worked, in the event that the Department receives serious allegations of a staff member's mistreatment of a domestic worker and seeks United Nations Secretariat assistance in gathering payment information.

The failure of the United Nations Secretariat to provide payment records to the Department and/or the United States Mission, if requested in the event of abuse allegations, would be brought to the Secretary's attention in any review he might undertake, pursuant to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, regarding suspension of domestic worker visas for a particular staff member of the United Nations. Further, the failure to provide requested records regarding a staff member's employment of a domestic worker could result in a denial of a request by the staff member to replace a former domestic worker or to increase his or her existing domestic staff.

Consistent with the general expectation that staff members of the United Nations pay their just debts, staff members are expected to pay any judgement awarding damages by a court with jurisdiction over a case brought against them by their former domestic workers. In 2010, a United States appellate court determined that former staff members of the United Nations who enjoy immunity while accredited are not immune from jurisdiction for matters relating to their employment of domestic workers after the staff members are terminated, because the acts comprising the employment of a domestic worker are not acts performed as a staff member of the United Nations and, thus, are not within the scope of residual immunity under article 39 (2) of the Vienna Convention on Diplomatic Relations.

Domestic worker visa eligibility requirements

Pre-notification

In the United States Mission's diplomatic note HC-125-S-09 dated 23 October 2009, the United Nations Secretariat was informed of the requirement that any prospective domestic worker must be notified to the Department before the worker applies for a visa. This "pre-notification" requires the United Nations Secretariat to submit a "pre-notification of a domestic worker" form ("pre-notification form") addressed to UNDomesticWorkers@state.gov. The pre-notification form can be found on the United States Mission's website under the host country accreditation and registration section at www.usun.state.gov/about/host_aff/c32163.htm. The United States Mission must receive this notification prior to the issuance of a G-5 visa. The United Nations Secretariat should note that this pre-notification process does not guarantee the issuance of a G-5 visa, nor does it change other

non-immigrant visa eligibility requirements relating to such visas. The United States Mission wishes to advise that it accepts pre-notification forms with the understanding that the United Nations Secretariat has reviewed and authorized any such proposed employment by a staff member of the United Nations of a domestic worker.

Ability to pay

In addition, the United States Mission requires that G-5 visas not be issued unless the United States consular officer responsible for reviewing the visa application reasonably concludes that the staff member of the United Nations will be able to provide the required wages and working conditions (addressed below). Consular officers will presume that a prospective domestic worker will not be provided the legally required wages and working conditions if the staff member of the United Nations does not carry the diplomatic rank of Assistant Secretary-General or above. To overcome this presumption, a prospective employer not having the rank of Assistant Secretary-General or above must demonstrate to the consular officer that he or she has the financial ability to pay the salary and related travel expenses of the domestic worker as specified in the contract. Consideration is also given to the number of domestic workers a staff member of the United Nations may reasonably be able to pay.

Consular officers will also presume that a prospective domestic worker is not eligible for a G-5 visa if the staff member of the United Nations has had previous instances of non-compliance with the contract of G-5 employees, or has had a pattern of employee disappearance, or if the Department and/or the United States Mission has received reliable allegations of mistreatment or abuse by that employer. To overcome this presumption, the staff member must demonstrate to the consular officer that such an outcome is not likely to reoccur.

Contract

The United States Mission's diplomatic notes HC-125-S-09 dated 23 October 2009 and HC-18-S-12 dated 20 January 2012 further specified the terms of employment that must be included in a written employment contract between a staff member of the United Nations and his or her domestic worker. The contract must be in English; if the domestic worker does not understand English, the contract must also be in a language understood by the domestic worker. Two copies of the contract must be signed by both parties, and a copy of the signed contract in English must be provided to the consular officer when a domestic worker applies for a visa. If the domestic worker does not understand English, a copy of the contract in English and in a language understood by the domestic worker must be provided to the consular officer.

All contracts must include the following provisions:

- **Description of duties**. The contract must describe the work to be performed (e.g. housekeeping (light or heavy), cooking, gardening, child care (how many children)) and must also include a statement that the domestic worker shall work only for the employer who signed the contract and will not accept any other employment while working for the employer.

- **Hours of work**. The contract must state the time of the normal working hours and the number of hours per week. It is generally expected that domestic workers will be required to work 35 to 40 hours per week. It must also state that the domestic worker will be provided a minimum of one full day off each week. The contract must indicate the number of paid national holidays, sick days and vacation days the domestic worker will be provided.

- **Wage rate**. The contract must state the hourly wage to be paid to the domestic worker. The rate must be the greater of the minimum wage under United States federal and state law or the prevailing wage for all working hours. Domestic workers in the New York City metro area must currently be paid a minimum of $10.32 per hour and overtime for all hours worked above 40 hours per week unless the domestic worker lives in the employer's residence. In such cases, the domestic worker must be paid an overtime wage for all hours worked above 44 hours per week. The contract must state that wages will be paid to the domestic worker either weekly or biweekly. No deductions may be taken from wages for lodging, medical care, medical insurance, travel or food. Changes to the prevailing wage will be notified to the United Nations Secretariat in the form of a diplomatic note. Upon receipt, all contracts must be amended to reflect the new prevailing wage rate.

- **Overtime work**. The contract must state that any hours worked in excess of the normal number of hours worked per week (35-40 hours, except as noted above) are considered overtime hours, and that hours in which the employee is "on call" count as work hours. It must also state that such overtime work must be paid as required by United States local laws.

- **Method of payment**. The contract must state that after the first 90 days of employment, all wage payments must be made by cheque or by electronic fund transfer to a bank account in the domestic worker's name only. Neither staff members of the United Nations nor their family members should have access to domestic worker bank accounts.

- **Transportation to and from the United States**. The contract must state that the employer will pay for all travel costs related to the employment of the domestic worker, which include transportation to the United States to begin employment, transportation from the United States when employment has concluded, and travel expenses related to any trips where the domestic worker has been asked to accompany the employer's family.

- **Tax payments**. The employer shall ensure that all of his/her domestic workers having G-5 visa status have sufficient information regarding wages and other payments or withholdings made to any tax or other government authorities in order to enable such domestic workers to properly prepare and file any required tax or other forms required to be filed by such authorities. The employer shall ensure that any forms required to be filed by the employer to any such tax or other governmental authorities on behalf of such domestic workers have been prepared and filed appropriately and in a timely manner. Unless such domestic workers having G-5 visa status are from a country with which the United States of America has a totalization/social security agreement providing that such workers are not required to participate in the United States social security programme or unless the staff member of the United Nations is otherwise exempt, the employer shall pay the employer's

portion of social security taxes and Medicare and any other required federal, state or local taxes or contributions, including federal and state unemployment insurance and workers compensation insurance on all wages actually paid, which shall not be less than the applicable minimum or prevailing wage. Unless otherwise paid by the employer, the domestic worker shall pay the employee's portion of social security and all federal, state and local taxes in connection with his/her income.

- **Other required terms of employment**. The contract must state that the employer agrees to abide by appropriate federal, state and local laws in the United States. The contract must also include a statement that the domestic worker's passport, visa and any I-94 card will be in the sole possession of the domestic worker and that a copy of the employment contract and other personal property of the domestic worker will not be withheld by the employer for any reason. Such personal property may include, but is not limited to, bank cards or statements, computers and cell phones. The contract should also include a statement that the domestic worker's presence in the employer's residence will not be mandated except during working hours. Any modification to the contract must be in writing.

- **Other recommended terms of employment**. The contract may also include additional terms of employment agreed upon, if any, provided they are fully consistent with all applicable United States federal, state and local laws.

Domestic worker arrival in the United States

Once a domestic worker has arrived in the United States and begun his or her employment, the staff member of the United Nations must register the domestic worker by submitting a clarification of status of household employee and arrival notice (form P.312A) to the Visa Committee and the Travel and Transportation Section of the United Nations Secretariat within five days of entry into the United States. A signed copy of the employment contract in English must be submitted to the Visa Committee.

Domestic worker wage payments

In compliance with the contractual terms above, the staff members of the United Nations employing domestic workers are required to make wage payments to domestic workers by cheque or electronic fund transfer to the domestic worker's bank account within 90 days of commencement of employment (cash payments with a receipt are permissible only within the first 90 days of employment).

Staff members of the United Nations are also required to retain records of employment and proof of wage payments made and to include a copy of the signed contract, weekly records of the number of hours worked, and proof of the payments made in connection to that work (e.g. cancelled cheque or electronic fund transfers, or signed receipts of cash payments during the first 90 days of employment). To avoid possible misunderstanding, all employers must maintain these records for the duration of the domestic worker's employment plus three years after.

Updating written contracts

Staff members of the United Nations employing domestic workers are required to update contracts, in writing, to reflect any changes to previously agreed information between the employee and employer to ensure that the contract is fully consistent with United States government requirements and all current United States federal, state and local laws.

Notification of termination

Staff members of the United Nations must notify the Visa Committee when a domestic worker has ended his or her term of employment and whether he or she has departed the United States. Submission of notifications of termination of domestic workers who have left the employment of staff members of the United Nations will relieve employers of their responsibility for such workers.